

Appl. No. 10/581,415  
Amdt. dated August 9, 2010  
Reply to Final Office action of May 10, 2010

REMARKS

Claims 10-29 remain in this application.

In the Final Office action the examiner rejected:

claims 10-12 and 27 as anticipated by Nitzberg et al., US 4,827,961,

claims 13-15, 21 and 25 as unpatentable over Nitzberg et al. in view of Meisenheimer et al.

claims 16, 17, 22 and 26 as unpatentable over Nitzberg et al. in view of Urya et al.

claim 18 as unpatentable over Nitzberg et al. in view of Meisenheimer et al. and Urya et al.,

claims 19, 20, 23, and 24 as unpatentable over Nitzberg et al.,

claims 10, 11 and 29 as unpatentable over Torres et al. in view of Nitzberg et al., and

claims 14 and 28 as unpatentable over Torres et al. in view of Nitzberg et al. and

Meisenheimer et al.

Applicants do not believe that the examiner's rejection of claims 10-12 and 27 as anticipated by Nitzberg et al. is a valid rejection. And at this juncture in the prosecution it is important to note that this is the only rejection made against claim 12 and 27.

There are two valve chambers taught in Nitzberg et al. The examiner has pointed to valve chamber 48 in her rejection, the other valve chamber is 54. Applicants believe that the examiner pointed to valve chamber 48 in the rejection so that she could say that the valve 114 of Nitzberg et al. has the property of closing the fluid conduit **upstream** from the valve chamber 48. However, valve chamber 48 does not **adjoin** fluid conduit 56 as required by claim 10. Valve chamber 48 and fluid conduit 56 are separated from each other by valve chamber 54 and also by structures 94 and 98. Thus the rejection of claims 10, 11, 12 and 27

Appl. No. 10/581,415  
Amdt. dated August 9, 2010  
Reply to Final Office action of May 10, 2010

based on Nitzberg et al. under 35 USC 102 fails because the valve chamber 48 and fluid conduit 56 do not adjoin each other as recited in claim 10.

An alternative interpretation of Nitzberg et al. would be to look at chamber 54 as the valve chamber. But considering chamber 54 as the valve chamber fails to make a valid rejection because under this interpretation the valve element 114, and also its counterpart, the unnumbered valve element above it, both close this chamber 54 on the downstream side, not on the upstream side as recited in claim 10. Thus this interpretation does not teach all of the structure recited in claims 10, 11, 12 and 27, and so it also does not make for a valid rejection under 35 USC 102.

Claim 12 includes recitation that the first and second conduit portions are approximately at a right angle with respect to each other. The examiner has shown on figure 2, copied from Nitzberg et al., an interpretation which has the conduit portions at right angles to each other. But the examiner's interpretation is only an approximation which overlooks the slanted offset which is shown but un-numbered in figure 2. This slanted offset is labeled 50 in figure 3. If this offset is considered, then the conduit portions are not at anything like a right angle with respect to each other, but instead these conduit portions are at an acute angle which is considerable less than 90 degrees.

And thus, in addition to the above mentioned deficiencies of the rejection of the base claims 10 and 11, Nitzberg et al. also does not have the structure which is specifically recited in claim 12, that the first and second conduit portions at approximately a right angle with respect to each other.

Appl. No. 10/581,415  
Am dt. dated August 9, 2010  
Reply to Final Office action of May 10, 2010

And claim 27 includes the further recitation that the first conduit portion extends no more than a very small distance past the second conduit portion. But in Nitzberg et al. the first conduit portion extends past the second conduit portion by an amount equal to the distance from line 94/98 to the edge of valve chamber 54, a distance which appears to be approximately  $\frac{1}{2}$  the width of the second conduit portion. This is a distance which cannot be considered to be an insignificant, or very small distance.

Thus claim 27 also includes specific structure which is not taught by the reference to Nitzberg et al.

Because of all of these deficiencies in the rejection based on 35 USC 102, claims 12 and 27 have been left identical to their former wording, except for making them independent by incorporating the language of **previous** claims 10 and 11 into both of them while eliminating the transition phrases "The valve assembly as recited in claim 10" and "The valve assembly as recited in claim 11".

Since the only rejection presented against claims 12 and 27 was based on Nitzberg et al. under 35 USC 102, and this rejection has been shown to be invalid, continuing the rejection of claims 12 and 27 under 35 USC 102 is not proper, and accordingly the Finality of the last Office action should be withdrawn. Claims 12 and 27 should either be allowed, or if the examiner continues to reject them, a new rejection is necessary.

And any such new rejection of claims 12 or 27 in turn requires that the examiner withdraw the finality of the present Office action and write a new action.

However, even in spite of the above mentioned deficiencies of the rejections, the wording of claim 10 has been modified so that the pump is now clearly recited to be a part of

Appl. No. 10/581,415  
Amdt. dated August 9, 2010  
Reply to Final Office action of May 10, 2010

the claimed structure, and not just merely being a part of the preamble. In particular, claim 10 now recites that the device is a high-pressure pump, that the pump includes an inlet valve assembly and a valve chamber, and that the valve element of the valve assembly is disposed in the recited valve chamber of the high-pressure pump.

The structure added to claim 10 is clearly shown and disclosed in figures 2, 4, 5 and 8, and is recited in paragraph 35 of the specification.

Since Nitzberg et al. is not a pump and does not teach any pump structure, clearly now any rejection based on Nitzberg et al. under 35 USC 102 cannot possibly be a proper rejection.

And since the structure of Nitzberg et al. is far removed from the pump art, there is no way that any rejection which might be based on pump structure modified in view of Nitzberg et al. could possibly be a valid rejection.

Applicants believe that the above arguments exclude any of the present rejections from being valid rejections. This is especially true for the rejection based on 35 USC 102.

The examiner has also rejected claims 10, 11 and 29 as unpatentable over Torres et al. in view of Nitzberg et al. But this rejection also cannot now be considered to be a valid rejection, since like Nitzberg et al., Torres et al. is not a high-pressure pump. Since neither of Torres et al. nor Nitzberg et al. is a high-pressure pump and neither reference teaches any pump structure, clearly the combination of the two references cannot be said to teach all of the structure as recited in these claims. And if all of the structure is not taught by the references, the structure cannot properly be considered to be obvious under the meaning of 35 USC 103.

Appl. No. 10/581,415  
Amdt. dated August 9, 2010  
Reply to Final Office action of May 10, 2010

Claims 14 and 28 have been rejected under 35 USC 103 as unpatentable over Torres et al. in view of Nitzberg et al. and Meisenheimer et al. But again, Meisenheimer et al., just like Torres et al. and Nitzberg et al., does not teach any pump structure, and thus this combination of references clearly also cannot properly be said to make the structure of these claims, nor the structure of the claims on which they depend, to be obvious.

Claims 13-15, 21 and 25 have been rejected under 35 USC 103 as unpatentable over Nitzberg et al. in view of Meisenheimer et al. But as mentioned above, Meisenheimer et al., just like Nitzberg et al., does not teach any pump structure. And so again, this rejection clearly also is not a valid rejection.

Claims 16, 17, 22 and 26 have been rejected under 35 USC 103 as unpatentable over Nitzberg et al. in view of Urya et al. But Urya et al., just like the other references considered so far, does not include any pump structure. And therefor again, with no teaching of pump structure, this rejection must also fail as an invalid rejection.

Claim 18 has been rejected under 35 USC 103 as unpatentable over Nitzberg et al. in view of Meisenheimer et al. and Urya et al. But again, this rejection does not include any teaching of pump structure, whereas the claims now recite that the structure is part of a high-pressure pump. Accordingly, this also is no longer a valid rejection.

Claims 19, 20, 23 and 24 have been rejected under 35 USC 103 as unpatentable over Nitzberg et al. And just like the above mentioned rejections, this rejection also is not a valid rejection since the prior art applied in this rejection does not include any teaching of pump structure. Since these claims are now recited to include pump structure, this is no longer a valid rejection.

Appl. No. 10/581,415  
Amtd. dated August 9, 2010  
Reply to Final Office action of May 10, 2010

For all of the above reasons, whether singly or taken in combination with each other, entry of this amendment and allowance of the claims are courteously solicited.

Respectfully submitted,



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